

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARION TINGMAN,

Defendant.

11-CR-1040 (SHS)

MEMORANDUM & ORDER

SIDNEY H. STEIN, U.S. District Judge.

On July 16, 2013, Marion Tingman was convicted by a jury of conspiring to distribute 280 grams or more of crack cocaine and possessing a firearm in furtherance of the conspiracy. Tingman had been the leader of a crack and cocaine distribution conspiracy based in Monticello, New York. (ECF No. 488 at 1.) The Court sentenced Tingman to a prison term of 15 years. By summary order, the Second Circuit later affirmed Tingman's conviction and sentence. *United States v. Tingman*, 642 Fed. App'x 12 (2d Cir. 2016).

Tingman, represented by counsel, has now filed a motion seeking compassionate release pursuant to 18 U.S.C. § 3582(c). (ECF No. 485.) He contends that the extraordinary and compelling reason supporting his release is that his medical conditions render him vulnerable to complications if he contracts COVID-19. (*Id.* at 6-7.) Tingman is 41-years-old, *see* PSR at 2, and asserts that he suffers from hypertension and issues stemming from multiple gunshot wounds he suffered in 2006, ECF No. 485 at 1. Tingman also contends that the COVID-19 outbreak at FCI Danbury and BOP shortcomings in containing the spread of the virus warrant his release. (ECF No. 485 at 7.) The government opposes his motion. (ECF No. 488.) The Court concludes that a reduction of a sentence in the circumstances presented here is not warranted.

First, defendant Tingman does not contend that he has received improper treatment for his medical conditions while incarcerated. The CDC has highlighted that individuals with hypertension may face a higher risk for severe illness from COVID-19. Tingman has been prescribed Amlodipine (an ACE inhibitor) and Carvedilol in connection with his hypertension. (ECF No. 485, Ex. A, at 17.) While Tingman's hypertension is serious, he makes no indication that he has not been treated adequately for his medical condition.¹

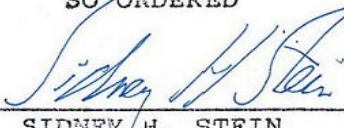
¹ Cf. *United States v. Witter*, No. 19 Cr. 568 (SHS), ECF No. 40 (S.D.N.Y. Mar. 26, 2020) (granting bond pursuant to 18 U.S.C. § 3145(c) pending sentencing to fifty-seven-year-old defendant who had pleaded

Indeed, Tingman's medical records suggest that he has actually undermined the BOP's efforts to treat him by failing to attend appointments, cooperate with medical personnel, and take prescribed medication. (*See, e.g.*, ECF No. 485, Ex. A, at 1, 67.) Moreover, while Tingman claims that he suffered a collapsed lung after being shot and suffers from difficulty breathing at various times, ECF No. 485 at 7, defendant's medical records illustrate that his lungs are now functioning properly, ECF No. 485, Ex. A, at 4, 15, 44. There is also no evidence that Tingman's carrying of a sickle cell trait, *see* ECF No. 485 at 7, places him at higher risk if he contracts COVID-19. Currently, no inmates and no staff members at FCI Danbury have COVID-19. *See* <https://www.bop.gov/coronavirus/> (last visited July 6, 2020).

Second, the Court cannot find that the application of 18 U.S.C. § 3553(a) factors favors an early release. The nature and circumstances of the offense are serious. Tingman led a conspiracy that was responsible for providing over 8.4 kilograms of crack cocaine in Sullivan County. (ECF No. 488. at 5.) His organization possessed a firearm to protect its operation. (*Id.*) Further, defendant still has approximately 72 months left in his sentence, which is a full 40 percent of his sentence.

Accordingly, IT IS HEREBY ORDERED that Tingman's motion for compassionate release is denied on the grounds that no extraordinary and compelling reason exists for his release and the section 3553(a) factors do not weigh in his favor.

Dated: New York, New York
July 6, 2020

SO ORDERED


SIDNEY H. STEIN
U.S.D.J.

guilty to a non-violent narcotics offense, because defendant was at heightened risk due to hypertension, which was being treated with Lisinopril, labetalol, and amlodipine besylate).